2001

# State of Utah v. Theodore Lopes : Brief of Appellant

Utah Supreme Court


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Vernon B. Romney; Assistant Attorney General; Attorneys for Respondent.

UTAH SUPREME COURT

BRIEF



IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH
Plaintiff-Respondent

-vs-

THEODORE LOPES
Defendant-Appellant

Case No. 14327

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# BRIEF OF APPELLANT

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APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE PETER F. LEARY, JUDGE, PRESIDING.

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# BRIEF OF APPELLANT

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## STATEMENT OF THE NATURE OF THE CASE

The appellant, Theodore Lopes, appeals from a conviction for the crime of carrying a concealed weapon, Utah Code Ann. §76-10-504 (1953), from a trial without jury in the Third Judicial District Court of Salt Lake County, State of Utah, the Honorable Peter F. Leary, presiding.

## DISPOSITION IN LOWER COURT

The appellant was charged with carrying a concealed weapon on June 1, 1975. A trial without jury resulted in a conviction for the crime as charged. Judge Peter F. Leary, Third Judicial District, State of Utah, pronounced judgment on September 30, 1975. As a result, the appellant was sentenced in accord with the law.

## RELIEF SOUGHT ON APPEAL

The appellant submits that the conviction should be dismissed, or in the alternative that the conviction should be reversed and a new trial granted.

## STATEMENT OF FACTS

On June 1, 1975, at approximately 5:30 p.m., Salt Lake City police officers Harkness, Roberts, and Mendez observed the appellant and a companion, Ms. Elizabeth Berry, riding in an automobile on Second South at approximately 400 West. The officers, having knowledge that there was an outstanding warrant for Ms. Berry's arrest, stopped the vehicle and proceeded to effect the arrest. Officer Roberts approached the appellant and requested to see his driver's license. The appellant produced a valid Utah driver's license. Officer Roberts detained the appellant while he returned to the patrol car to radio the dispatcher and have an investigation of the files made to determine if there were any bench warrants or outstanding felony warrants out on the appellant. The check revealed that the dispatcher was in possession of a bench warrant for the appellant's arrest, the warrant stemming from a traffic violation. Officer Roberts returned to the appellant's vehicle and informed him he was under arrest. The appellant was then searched and the search revealed he was carrying an unloaded pistol. Officer Roberts testified at trial that prior to conducting the check with the dispatcher, he had no knowledge of the appellant and that on the day in question he had not observed

the appellant violate any traffic laws.

## ARGUMENT

### POINT I.

THE APPELLANT'S CONTINUED DETENTION FOLLOWING HIS PRESENTATION OF A VALID DRIVER'S LICENSE WAS AN UNLAWFUL SEIZURE AND EVIDENCE GAINED AS A RESULT OF SUCH UNLAWFUL SEIZURE WAS INCORRECTLY ADMITTED AT TRIAL.

The United States Supreme Court has on numerous occasions recognized that non-arrest detentions fall within the purview of the Fourth Amendment and that such detentions are constitutionally permissible only upon a showing that the police had articulable facts from which rational inference could be drawn that the detained individual was involved in criminal activity. Terry v. Ohio, 392 U. S. 1 (1968); Adams v. Williams, 407 U. S. 143 (1972). Since the Court announced its decision in Terry, state and federal courts have consistently acknowledged that the stopping of a motorist is a seizure of the person which must meet constitutional standards, both at its initiation and in its ultimate scope. Lowe v. United States, 407 F. 2d 1391 (9th Cir. 1969); People v. Ingle, 330 N. E. 2d 39 (N. Y. Ct. App. 1975). See generally Note, Automobile License Checks and the Fourth Amendment, 60 Virginia Law Review 666 (1974).

While there is a split of authority on the issue of whether a traffic stop is constitutionally permissible if its only purpose is for the inspection of a driver's license or vehicle registration, even those courts which sanction such stops warn that license checks are violative of Fourth Amendment standards if they exceed the limited purpose for which they are intended. In Palmore v. United States, 290 A. 2d 573 (D. C. App. 1972),

of a license inspection stop which had revealed that the operator of the vehicle was not in possession of a legal registration. The court noted, however, that inspections for documents could not lawfully be employed as a device for officers to conduct investigations into possible criminal activity unrelated to the possession of a valid license or registration. "[W]hen the driver has produced his permit and registration and they are in order, he must be allowed to proceed on his way, without being subject to further delay by police." 290 A. 2d at 583.

In the instant case, the State contends that the appellant's stop was justified because the officers intended to arrest his passenger, and that having once stopped the vehicle the officers were empowered by Utah Code Ann. §41-2-15 (1953) to request the appellant to display his driver's permit. As far as they go, these assertions are correct. However, the State's position fails to recognize that the Utah Motor Vehicle Code only empowers the officers to check the license for the purpose of determining if the driver is unlawfully operating his vehicle. It does not grant the police free reign in detaining the motorist while they process investigatory checks with central data files. In United States v. McDevitt, 508 F. 2d 8 (10th Cir. 1974), the Tenth Circuit Court of Appeals was called upon to decide just this question. In interpreting the New Mexico Motor Vehicle Code--which is identical to Utah's, both being adoptions of the Uniform Motor Vehicle Code--the court held that when a driver has presented valid licensing documents and there is no reasonable suspicion at that time that he is involved in criminal activity officers cannot lawfully detain him further. In McDevitt, officers of the New Mexico State Police had stopped the defendant to check his documents. In spite of the fact that they were in order the officers detained McDevitt while they ran a check with the

National Crime Information Center to determine if he was wanted on any criminal charge. When the report came back that McDevitt was a deserter from the Navy, the officers took him into custody, impounded his vehicle and searched it. The search revealed 800 pounds of marijuana. In reversing the defendant's conviction, the court held that the continued detent ion following presentation of valid documents was unlawful, and that all evidence gained as a result of such an unconstitutional seizure was inadmissable. The court reiterated its earlier holding, in United States v. Fallon, 457 F. 2d 15, 18 (10th Cir. 1972), that "even an investigatory detention must be based on reasonable ground, if not probable cause."

In the instant case, the officers testified at trial that the appellant had committed no traffic violations, that he had produced a valid Utah driver's license when asked to do so, and that the officers had no reason to believe he was involved in any criminal activity at the time they made their stop. (Tr. 4-5). The suggestion was made by the State at trial that the appellant was subject to detention and search simply because he was in the presence of "a known prostitute." This assertion, however, is clearly erroneous as the Supreme Court has held that merely being in the company of "known criminals" is not sufficient ground in itself to warrant any detention or search of an individual. Sibron v. New York, 392 U.S. 40 (1968).

The sole justification of the officers, therefore, in detaining the appellant while they conducted the check with the dispatcher was the provision

of the Motor Vehicle Code which requires motorists to display their licenses upon demand. However, as the court's holding in McDevitt demonstrates, the so-called "display" statutes of the Motor Vehicle Code are not intended to serve any purpose other than insuring that automobiles driven on the highways are lawfully registered and operated by those who have proven their competence to drive by written and practical examination.

Licensing and registration requirements of automobiles were originally enacted as revenue producing measures. Miami v. Aronovitz, 114 So. 2d 784 (Fla. 1959). Both legislatures and courts subsequently recognized that they served a public safety purpose. See Commonwealth v. Swanger, 307 A. 2d 875 (Pa. 1973). The purpose of the display statutes in the Motor Vehicle Code is to allow officials to make sure these state interests are not being circumvented by individuals driving without being properly registered or licensed. While violation of licensing provisions is a misdemeanor, the State's interest in inspecting the documents is essentially a civil standard--to prevent unsafe highway conditions and raise needed revenue--and any general state interest in investigating possible criminal violations can only be satisfied in a manner which complies with constitutional safeguards which surround all criminal investigation, courts must give careful scrutiny to all cases where a supposedly civil inspection results in a detection of a criminal violation other than not meeting the requirements which the inspection was purportedly checking. To do otherwise is to fail to properly guarantee citizens the protections enumerated in the Fourth Amendment. The Supreme Court recognized this,

in Camara v. Municipal Court, 387 U.S. 523 (1967), and held that inspections for housing code violations, though primarily civil in nature, should be conducted pursuant to warrant to protect citizens from potential abuse of discretion by government officials acting under the guise of a "civil" inspection provision.

The necessity of this protection is manifest in the case at bar. It is beyond question that if the appellant and his companion had been walking instead of riding in an automobile that the police would not have been empowered to detain the appellant and request identification with which they could check for outstanding warrants. Utah Code Ann. §77-13-33 (Supp. 1975) provides that an officer can stop an individual and demand identification from him only when the officer has probable cause to believe that the individual has committed, is committing, or is about to commit a felony. In Terry v. Ohio, supra, the Supreme Court took the more permissive stance that an officer could detain an individual for brief questioning when articulable facts indicated that the person was involved in criminal activity. Under either standard, the appellant's mere presence in the company of Ms. Berry would not be sufficient to justify his detention, Sibron, supra, and the officers admitted there was nothing about the appellant's conduct which suggested he was involved in any criminal activity. The State, therefore, is asking this court to adopt a rule of criminal procedure which would provide that motorists give up the constitutional rights they enjoy as pedestrians for the privilege of being allowed to drive a car. Such a holding has already been foreclosed by the Supreme Court. In Graham v. Richardson, 403 U.S. 365 (1971), the Court stated that it had "rejected the concept that constitutional rights turn upon whether a governmental benefit is

characterized as a 'right' or as a 'privilege' " 403 U.S. at 374. See generally Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 Harvard Law Review 1439 (1968). Motorists and pedestrians alike have a constitutional right to be free from all unreasonable government searches and seizures. Because driving is a potentially dangerous activity, and is therefore regulated by the State, some interference of a motorist by government is not unreasonable. To the extent it is necessary to ensure compliance with licensing provisions, it is not unreasonable that a motorist who has already been lawfully stopped be asked to prove that he is entitled to drive. However, once having rendered that proof, the driver again stands on an equal footing with the pedestrian. If the standards which are applicable for further investigation--reasonable suspicion of criminal activity--have not been met, then continued detention of the motorist for that purpose is unlawful. This is exactly the thrust of the court's position in McDevitt, supra, and Palmore, supra.

## CONCLUSION

The appellant lawfully complied with the demands of the Motor Vehicle Code by presenting an admittedly valid license upon request. By detaining him past this point, the police engaged in an unlawful seizure. It is by now axiomatic that evidence gained through violation of the Fourth Amendment is inadmissible in a state court by application of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643 (1961), State v. Richards, 26 Utah 2d 318, 489 P. 2d 422 (1971). This prohibition is just as applicable to evidence

obtained as a result of unlawful seizure as it is to that of unlawful search. Davis v. Mississippi, 394 U.S. 721 (1969). Therefore, the admission of the weapon found on the person of the appellant was error, and it being sole evidence of appellant's guilt, this Court should dismiss the conviction or reverse and remand for new trial.

Respectfully submitted,

LYNN R. BROWN
Attorney for Appellant